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**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**Robert Keiner, Esq.**  
**Covington & Burling**  
**1201 Pennsylvania Avenue, NW**  
**Washington, D.C. 20004**

**OCT 24 2006**

**RE: MUR 5849**  
**Bank of America Corporation**

**Dear Mr. Keiner:**

On October 17, 2006, the Federal Election Commission found that there is reason to believe that your client, Bank of America Corporation, violated 2 U.S.C. §§ 441(b)(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information contained in your submission, dated February 26, 2006, and ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

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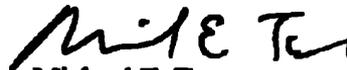
Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Marianne Abely, the staff attorney assigned to this matter, at (202) 694-1650.

Sincerely,

  
Michael E. Toner  
Chairman

Enclosures  
Factual and Legal Analysis  
Procedures

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT: Bank of America Corporation MUR: 5849**

4 **I. INTRODUCTION**

5 This matter originated with a *sua sponte* submission filed by the Bank of America  
6 Corporation (the "Bank"), on behalf of its wholly owned subsidiary, Bank of America N.A. The  
7 Bank admits reimbursing political contributions totaling \$10,030, made by thirteen officers and  
8 managers in the Bank's Student Banking and Wholesale Lending Divisions from 1999 through  
9 mid-2004.

10 **II. FACTUAL BACKGROUND**

11 **A. Reimbursed Contributions From the Student Banking Division**

12  
13 The Bank's Los Angeles-based Student Banking Division employs about 160 individuals  
14 for the purpose of providing education financing and other banking services to students. At all  
15 times relevant to this matter, the division was managed by Senior Vice President, Kathleen  
16 Cannon. Cannon served as the division's senior vice president for twelve of the twenty-nine  
17 years she worked at the Bank, and in that capacity, directly supervised nine managers. It appears  
18 that Cannon had significant autonomy in running the division, due in part to frequent turnover  
19 among her direct supervisors.

20 According to the *sua sponte* submission, the Bank's internal investigation concluded that  
21 the Bank reimbursed a total of \$8,200 in political contributions made by employees of the  
22 Student Banking Division. Cannon directly authorized \$7,100 of the reimbursements for  
23 managers, who reported directly to her. Two of Cannon's subordinate managers who reported  
24 directly to Cannon authorized the reimbursement of the remaining \$1,100 for contributions made

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1 by employees who reported directly to them. Specifically, Robert Rubio, Accounts and  
2 Production Support Manager, authorized the reimbursement of one \$600 political contribution  
3 made by one of his employees; and Alec Reinstadtler, Sales Manager, authorized the  
4 reimbursement of one \$500 contribution made by one of his employees. The following chart  
5 summarizes the details regarding each individual political contribution that appears to have been  
6 reimbursed to Student Banking Division personnel.

Contributor	Amount Of Contribution	Recipient Committee	Amount of Reimbursement	Expense Report Date	Authorizing Manager
Baehr	\$500	McKeon	\$500	12/15/99	Cannon
Rubio	\$250	Johnson	\$250	12/6/01	Cannon
Reinstadtler	\$250	Johnson	\$250	12/14/01	Cannon
Mills	\$250	Johnson	\$250	12/19/01	Cannon
Reinstadtler	\$1,000	McKeon	\$1,000	5/6/02	Cannon
Mills	\$500	McKeon	\$500	10/11/02	Cannon
Evans	\$500	McKeon	\$500	10/16/02	Reinstadtler
Baehr	\$500	McKeon	\$500	10/25/02	Cannon
Aimilian	\$400	McKeon	\$400	11/10/03	Cannon
Baehr	\$400	McKeon	\$500	11/10/03	Cannon
Mills	\$400	McKeon	\$400	11/10/03	Cannon
Rubio	\$400	McKeon	\$400	11/10/03	Cannon
Cline	\$400	McKeon	\$400	12/9/03	Cannon
Boykin	\$400	McKeon	\$400	12/10/03	Cannon
Mills	\$250	Pomeroy	\$250	12/11/03	Cannon
Rubio	\$150	McKeon	\$150	3/3/04	Cannon
Aimilian	\$150	McKeon	\$150	5/19/04	Cannon
Boykin	\$600	McKeon	\$600	7/8/04	Cannon
Robertson	\$600	McKeon	\$600	7/9/04	Rubio
Cline	\$300	McKeon	\$300	7/13/04	Cannon
<b>Total:</b>	<b>\$8,200</b>		<b>\$8,300<sup>1</sup></b>		

7  
8 In an interview with investigators for the Bank's counsel, Cannon apparently admitted  
9 that she solicited contributions from her subordinates, instructed them to submit requests for

<sup>1</sup> On November 10, 2003, Baehr was reimbursed \$500 for a \$400 contribution he made to McKeon for Congress.

29044252742

1 reimbursement of the contribution, and subsequently approved those requests. Cannon stated  
2 that she began this practice in 1999 after being informed by staff of Representative Howard P.  
3 "Buck" McKeon, that she could not use a corporate check to pay for a table at the annual  
4 fundraising dinner for McKeon's principal campaign committee, McKeon for Congress. As  
5 shown in the chart of contributions, the majority of Cannon's fundraising efforts were on behalf  
6 of McKeon, Chairman of the House Committee on Education and the Workforce, which is the  
7 authorizing committee for federal student lending legislation. Cannon apparently told  
8 investigators that she lives in Representative McKeon's district and has known him since  
9 approximately 1993. However, she also apparently stated that she was not a McKeon supporter  
10 and did not get any personal benefit out of soliciting contributions for his committee, asserting  
11 that her sole motivation in soliciting political contributions was to assist the Bank.<sup>2</sup>

12 In her interview, Cannon apparently asserted that she understood the McKeon  
13 committee's admonition against corporate checks to mean that while Bank checks could not be  
14 used, individual employees could make personal contributions and then obtain reimbursement  
15 from the Bank as a business development expense.<sup>3</sup> Therefore, instead of using a Bank check to  
16 cover the cost of the table at the McKeon fundraiser as she had planned, Cannon wrote a

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<sup>2</sup> Cannon had previously made two \$250 contributions to McKeon in 1998. Between 1998 and 2005, Cannon contributed a total of \$6,450 to McKeon for Congress. During that same period, she contributed an additional \$2,950 to other political committees. According to the *sua sponte* submission, Cannon did not seek reimbursement from the Bank for any of these contributions because she was well paid and she did not want to deplete her limited client development budget. The term "client development budget" is not defined in the *sua sponte* submission.

<sup>3</sup> In an interview with investigators, the Bank's PAC administrator apparently stated that Cannon regularly solicited PAC contributions from all eligible employees in the division via conference call. Unlike the specific contributions solicited by Cannon which are at issue in this matter, it appears that Cannon never offered to authorize the reimbursement of any contributions she solicited for the Bank's PAC. According to the *sua sponte* submission, Cannon told investigators that she never offered to reimburse employee contributions to the Bank's PAC because, unlike the McKeon events, such contributions were not "business development."

29044252743

1 personal check in the amount of \$1,000 to McKeon for Congress and requested that at least one  
2 of her direct reports also make a personal contribution to McKeon. Christian Bachr, Credit  
3 Manager of the Student Banking Division, apparently told investigators that Cannon instructed  
4 him to contribute \$500 to the McKeon campaign, which he subsequently did, and told him that  
5 he could expense it. Bachr submitted a request for reimbursement of the contribution, which  
6 Cannon authorized, and the Bank reimbursed Bachr.<sup>4</sup>

7 The next instance of Cannon soliciting political contributions from Student Banking  
8 personnel apparently did not occur until December 2001. At that time, Cannon asked some of  
9 her direct reports to attend a fundraiser for Senator Tim Johnson. In response to Cannon's  
10 request, Reinstadtler, Rubio and Don Mills, Manager of Sales and Marketing; contributed \$250  
11 each to attend a breakfast fundraiser for the Senator. Each submitted a request for  
12 reimbursement. With Cannon's approval, the Bank issued reimbursements to each manager.

13 In the spring of 2002, Cannon again asked one of her direct reports to make a personal  
14 political contribution to McKeon. Reinstadtler told investigators that Cannon called him and told  
15 him that she needed him to travel to the District of Columbia in order to participate in a golf  
16 event benefiting Representative McKeon. Reinstadtler stated that he wrote a personal check to  
17 cover the \$1,000 fundraising event. As he had done with a previous contribution, he submitted a  
18 request for reimbursement, Cannon approved the request, and the Bank issued the  
19 reimbursement.

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<sup>4</sup> The Bank admits that it reimbursed each of the political contributions at issue in this matter. While the ~~sub~~ *sub* ~~mits~~ *mits* submission did not include copies of the reimbursement checks, the Bank provided copies of the Travel and Expense Account documents submitted by the employees who received reimbursement for their political contributions.

1 On October 18, 2002, Baehr and Mills, along with Kenneth Evans, West Regional Sales  
2 Manager for Student Banking, each contributed \$500 to McKeon for Congress.<sup>5</sup> According to  
3 the *sua sponte* submission, each submitted a request for reimbursement. Cannon authorized  
4 Baehr's and Mills's requests, and Evans's request was approved by his immediate supervisor,  
5 Reinstadtler. Evans told Bank investigators that Cannon instructed him to categorize the  
6 contribution on his expense report as a "charitable contribution." Cannon admitted to  
7 investigators that she usually told her direct reports how to expense the political contribution  
8 checks.

9 In 2003, Cannon began soliciting contributions via e-mail. The first of these e-mails,  
10 dated November 3, 2003, contained the subject line "McKeon dinner – Important" and was sent  
11 to eighteen Bank employees, including seven of Cannon's direct reports. Cannon stated that she  
12 "agreed, once again to purchase a table" for McKeon's annual dinner and needed eight people to  
13 join her. In response to an e-mail query from direct report Susan Ainilian, Manager of Service  
14 and Audit Support, about the cost of attending, Cannon simply stated, "you can expense it." In  
15 addition to Ainilian, five other direct reports each contributed \$400 to McKeon for Congress:  
16 Baehr, Mills, Rubio, Dee Cline, Strategic Initiatives Manager and Gemma Boykin, Manager of  
17 Loan Origination, Loan Support, Voice of the Customer. Each submitted a request for  
18 reimbursement of their respective contribution and, with Cannon's authorization, the Bank  
19 reimbursed all six contributions.

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<sup>5</sup> Cannon also contributed \$500 to McKeon for Congress on the same date that these three contributions were made. It appears that the contributions were made to purchase tickets for a McKeon fundraiser. Baehr's expense report included a McKeon Committee receipt titled "Let Freedom Ring," and Evans's expense report included the invitation for the same event.

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1 Cannon made a verbal solicitation for political contributions from two direct reports in  
2 December 2003. Reinstadtler and Mills told investigators that, during the course of the  
3 December 2003 Consumer Banking Association conference in Washington D.C., Cannon asked  
4 them to contribute to Earl Pomeroy for Congress. Each contributed \$250 to the committee, but  
5 only Mills requested and received, with Cannon's authorization, reimbursement for this  
6 contribution.<sup>6</sup>

7 On February 20, 2004, Cannon sent eight of her direct reports another solicitation for  
8 contributions via e-mail with the subject heading "McKeon Fundraiser." This e-mail states, in  
9 pertinent part, "I need two checks for a McKeon fundraiser (hopefully two people that did not  
10 write before). I will show you how to expense it so you will not be out of pocket." Rubio and  
11 Ainilian contributed \$150 to McKeon for Congress in response to the e-mail. Each requested  
12 reimbursement and the Bank reimbursed both contributions with Cannon's authorization.

13 On June 11, 2004, Cannon issued another e-mail solicitation inviting Anilian, Baehr,  
14 Boykin, Cline, Evans, Mills, Rubio, and Bob Kolich, Portfolio Management Manager, as well as  
15 eighteen other Student Banking Division employees to a July 9, 2004 fundraising dinner to  
16 benefit Representative McKeon. After providing details regarding the event, the e-mail states in  
17 pertinent part "[t]he tickets can not be expensed as it is a contribution." Cannon was asked to  
18 explain this statement, given that it appeared to directly contradict her assurance in the February  
19 20, 2004 e-mail that she would show those who contributed "how to expense it." Cannon stated  
20 that the June 11, 2004 e-mail referred to the prohibition on the Bank submitting a check directly,

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<sup>6</sup> Reinstadtler told investigators that he did not submit a reimbursement request for this political contribution because a Bank colleague had recently told him that the practice was the equivalent of the Bank making the contribution and was, thus, improper.

1 i.e. that the bank could not write the original check. Cannon also offered that the Student  
2 Banking Division frequently "expensed" tables purchased at charitable events.

3 It appears that Cline, Mills and Rubio each contributed \$300 to McKeon for Congress in  
4 response to Cannon's solicitation of June 11.<sup>7</sup> Cline's contribution was reimbursed, but neither  
5 Mills nor Rubio requested reimbursement for their contributions. Cline apparently told  
6 investigators that Cannon telephoned her to follow up on the June 11<sup>th</sup> e-mail solicitation. Cline  
7 asserts that, during this conversation, Cannon pressured her to send in a contribution via intra-  
8 office mail, adding that Cline could "expense it." Cline says she stated, "but that's not what your  
9 e-mail says." According to Cline, Cannon responded that she should "just write the check,  
10 you're going to expense it." Cline subsequently contributed \$300 to McKeon for Congress and  
11 submitted a request for reimbursement of the contribution, which the Bank reimbursed with  
12 Cannon's approval.<sup>8</sup>

13 Boykin, who did not read the June 11<sup>th</sup> e-mail solicitation, told investigators that she  
14 contributed \$600 to the McKeon for Congress committee in response to a verbal solicitation by  
15 Cannon.<sup>9</sup> Boykin submitted a request for reimbursement of her \$600 political contribution,  
16 which the Bank reimbursed with Cannon's authorization.

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<sup>7</sup> It appears that each of these contributions was made to the campaign for the purpose of attending the fundraiser discussed in Cannon's e-mail. McKeon for Congress received these contributions and Cannon's \$600 contribution on the same date, September 1, 2004. See chart *supra* p. 5. Rubio direct report Dale Robertson's \$600 contribution to McKeon for Congress was also made on that same date. *Id.* Additionally, Robertson, Senior Technology Manager, included a copy of the invitation to the July 9, 2004 fundraiser with his request for reimbursement of his contribution.

<sup>8</sup> In her reimbursement request form, Cline wrote that she had lost the receipt for the expense, which she described as "Public/Community Relations." Cline subsequently told Bank investigators that the statement about her losing the expense receipt was false. The *sua sponte* submission contained no discussion of why Cline made the false statement.

<sup>9</sup> Boykin apparently told investigators that she did not read the June 11<sup>th</sup> e-mail solicitation because her secretary deleted the e-mail while she was on vacation.

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1 Although Mills and Rubio each contributed \$300 to McKeon for Congress in response to  
2 Cannon's June 11, 2004 e-mail solicitation, each stated that they had recently developed  
3 concerns regarding the propriety of the practice and, therefore, did not request that these  
4 contributions be reimbursed. Mills told investigators that he was first alerted to the possible  
5 illegality of the practice when he read a LOS ANGELES TIMES article in early 2004 regarding a  
6 local employer who coerced his employees into making contributions. Although the article did  
7 not discuss the reimbursement of contributions directly, Mills stated it made him think there was  
8 something wrong with the reimbursement process.

9 Rubio told investigators that he started having doubts about the propriety of obtaining  
10 Bank reimbursement for contributions at some point in 2004 prior to receiving the June 11<sup>th</sup>  
11 e-mail solicitation from Cannon. Rubio was unable to articulate exactly what caused him to have  
12 these doubts, but they were apparently serious enough to prevent him from seeking  
13 reimbursement for his \$300 contribution to McKeon for Congress in June 2004.

14 Despite his doubts about the practice, Rubio authorized the reimbursement of a \$600  
15 contribution to McKeon for Congress made by his direct report, Dale Robertson, Senior  
16 Technology Manager.<sup>10</sup> According to investigators, Rubio authorized this reimbursement after  
17 seeing Cannon's June 11, 2004 e-mail solicitation. Rubio was unable to tell investigators exactly  
18 why he approved this reimbursement and instead provided them with varying explanations,  
19 although it appears that he attempted to shift the blame onto Cannon. At first, Rubio said he  
20 could not recall the circumstances surrounding the authorization or whether he discussed it with  
21 Robertson. He then told investigators that although he had not discussed it with Cannon, he

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<sup>10</sup> There is no information as to who solicited this contribution from Robertson, who was not a recipient of Cannon's June 11, 2004 e-mail.

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1 assumed she had vetted and approved the request. Rubio also contended that Robertson told him  
2 that Cannon "instructed Robertson to have the contribution reimbursed." Rubio stated that  
3 because Cannon approved the reimbursement, it "wasn't his decision."

4 On July 8, 2005, Cannon sent a fourth and final e-mail, this time to Rubio, Boykin,  
5 Bachr, Cline, Mills and Robertson soliciting contributions for a McKeon fundraiser being held  
6 on July 9, 2005. Cannon states in the e-mail, "I would ask each of you to write a check for \$250  
7 and then expense it as business development. I have a receipt for each of you to use in your  
8 expenses. Thanks – I will not mail the check until you get reimbursed."

9 Immediately after receiving Cannon's July 8<sup>th</sup> e-mail, Boykin reportedly confronted  
10 Cannon regarding the legality of obtaining reimbursements for political contributions. Boykin  
11 told investigators that she had just completed the Bank's new on-line ethics training and, as a  
12 result, claims that she learned for the first time that using Bank funds to reimburse contributions  
13 was "wrong."<sup>11</sup> Boykin stated that she entered Cannon's office and gave Cannon her  
14 contribution check. According to Boykin, when Cannon asked whether she had been  
15 reimbursed, Boykin responded that reimbursements were in violation of the rules set forth in the  
16 ethics training. Boykin said that Cannon looked up at her and said, "Oh – I know." Boykin  
17 asked Cannon why she told her to expense the contribution and Cannon did not respond.

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<sup>11</sup> The Bank's ethics manual, dated June 1, 2005, stated that "[f]ederal statutes make it unlawful for a national bank to make any contribution through the use of funds, services, property or other resources in conjunction with any federal, state or local election. Additionally, corporations are also restricted from making contributions in federal elections and in many states." In 2005, the Bank's ethics training was significantly revised and improved by its new on-line format, which required that employees answer specific questions on its contents. The 2005 on-line training reportedly prompted the Student Banking employees to discuss Cannon's practice of soliciting political contributions and authorizing their reimbursements with Bank funds.

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1 According to the *sua sponte* submission, Cannon denied telling Boykin she knew that obtaining  
2 reimbursements from the Bank was improper or illegal.<sup>12</sup> *Id.*

3 Cannon received several checks in response to her July 8<sup>th</sup> e-mail, including Boykin's  
4 and one from Dee Cline. However, before Cannon delivered any of the checks to McKeon for  
5 Congress, the Bank commenced its internal investigation. Even though Cline's check was never  
6 delivered to McKeon for Congress, she requested, and received reimbursement for the  
7 contribution check, with Cannon's authorization.

8 **B. The Wholesale Lending Division**

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10 As previously discussed, the Bank's internal investigation attempted to determine  
11 whether the pattern of reimbursements extended beyond the Student Banking Division. As a  
12 result of these efforts, the Bank discovered that it also reimbursed \$1,830 in contributions made  
13 by personnel in the Wholesale Lending Division between 2003 and 2004. Specifically, In  
14 addition, Wayne Roltzen, Senior Vice President and Private Client Advisor, authorized the  
15 reimbursement of a single political contribution made by one of his direct reports. In addition,  
16 Edward Kaluah, Manager for National Wholesale Production, authorized the reimbursement of a  
17 political contribution made by his direct report, Jan C. Brown, Senior Vice President for  
18 Wholesale Lending. Brown, in turn, authorized the reimbursement of political contributions  
19 made by two of her direct reports. The following chart summarizes the details regarding each  
20 individual political

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<sup>12</sup> Boykin told investigators that she told several other Cannon direct reports, including Mills and Robertson, about this conversation soon after it occurred. According to the *sua sponte* submission, Mills apparently recalled that Boykin reported Cannon saying something along the lines of – “we won't get caught.”

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1 contribution that appears to have been reimbursed to Wholesale Lending Division personnel.

Contributor	Amount Of Contribution	Recipient Committee	Amount of Reimbursement	Expense Report Date	Authorizing Manager
Hamil	\$250	Grassley	\$250	9/5/03	Roltzen
Brown	\$500	DFWAMB PAC	\$500	4/12/04	Kalush
Fitzgerald	\$250	DFWAMB PAC	\$250	5/17/04	Brown
Fitzgerald	\$80	DFWAMB PAC	\$80	5/17/04	Brown
Fitzgerald	\$250	TAMB PAC	\$250	10/7/04	Brown
Bettis	\$500	TAMB PAC	\$500	9/16/04	Brown
<b>Total:</b>	<b>\$1,830</b>		<b>\$1,830</b>		

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The *sua sponte* submission provided little information relating to the first contribution reimbursed within the Wholesale Lending Division. Former employee Brandon Hamil contributed \$250 to Senator Chuck Grassley. The Bank reimbursed this contribution with the authorization of Hamil's supervisor, Wayne Roltzen. Attached to Hamil's expense report is an invitation to a reception for the Senator that took place in West Des Moines on June 7, 2003. Hamil categorized the expense in this report as "customer entertainment."

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As the chart shows, the majority of these contributions were made to two industry political action committees, the Dallas/Ft. Worth Association of Mortgage Brokers PAC ("DFWAMB PAC") and the Texas Association of Mortgage Brokers PAC ("TAMB PAC") and to one candidate, Senator Charles Grassley. Brown and her direct report Kent Fitzgerald, a salesman in the Wholesale Lending Division, each made contributions to DFWAMB PAC in the amount of \$500 and \$250, respectively, to participate in a golf tournament sponsored by the PAC as a part of the association's 2004 annual conference. Fitzgerald paid an additional \$80 to attend a horse race that was a part of the same conference. Fitzgerald and Rusty Bettis, another salesman in the Wholesale Lending Division, each made contributions to TAMB PAC in the

29044252751

1 amount of \$250 and \$500, respectively, to participate in a golf tournament sponsored by that  
2 PAC as a part of the association's 2004 annual conference. Brown, Fitzgerald and Bettis each  
3 requested reimbursement of these contributions from the Bank. Brown's \$500 political  
4 contribution was reimbursed by the Bank with the authorization of her superior, Edward  
5 Kalush.<sup>13</sup> Fitzgerald's and Bettis's contributions to DFWAMB PAC and TAMB PAC were  
6 reimbursed by the Bank with Brown's authorization.

7 Brown, Fitzgerald and Bettis each stated that they considered these events as purely client  
8 entertainment and not fundraisers for the sponsoring PACs even though all the golf and other  
9 event invitations and other materials produced by the Bank indicate that the events were PAC  
10 related, requested payment with personal funds and in at least one case stated that a corporate  
11 credit card could not be used as payment. Brown told investigators that golf events were  
12 considered a standard industry method of doing business. Additionally, Brown, who had some  
13 experience with a state PAC through her position on the Board of Directors of a mortgage  
14 lending association, stated that while she was aware that by seeking reimbursement they were  
15 not using personal funds, she understood that the PACs allocated their funds in such a way that  
16 payments for these events were not political contributions. Fitzgerald told investigators that he  
17 did not view the events as political and did not understand that the golf fees were going to  
18 political committees. Similarly, Bettis told investigators that he thought the TAMB PAC event  
19 was simply a golf tournament and had no idea the fees were political contributions.

20 It appears that the individual employees received invitations to these events (two of  
21 which involved an opportunity to play golf and one of which involved an outing at a race track),  
22 voluntarily decided to attend and bring clients, and requested that their supervisor authorize

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<sup>13</sup> The Bank did not interview Kalush as part of its investigation because he had retired.

1 reimbursement of the expense. Indeed, the expense reports filed by Brown, Fitzgerald and Bettis  
2 indicate that they hosted industry clients at each of these events. According to the *sua sponte*  
3 submission, as with other forms of client entertainment, reimbursements for golf and other  
4 outings were routinely requested and authorized; in fact, the division included golf events in their  
5 marketing budget.

6 **III. LEGAL ANALYSIS**

7 The Bank admits that through the actions of the officers and managers identified in this  
8 report, it made prohibited corporate and national bank contributions and reimbursed \$10,030 in  
9 political contributions made by thirteen of its employees, in violation of 2 U.S.C. §§ 441b(a) and  
10 441f. The record in this matter demonstrates that the Bank's corporate officers and managers  
11 routinely approved the reimbursement of certain categories of expenses incurred by their  
12 subordinates. Therefore, the reimbursement of expenses by the Bank's corporate officers and  
13 managers was within the scope of their employment and the Bank can be held liable for their  
14 approval of the reimbursement of illegal expenses, such as political contributions.

15 It is well settled that a principal is liable for the acts of its agents committed within the  
16 scope of his or her employment. *Weeks v. United States*, 245 U.S. 618, 623 (1918); *Rouse*  
17 *Woodstock Inc. v. Surety Federal Savings & Loan Ass'n*, 630 F. Supp. 1004, 1010-11 (N.D.Ill.  
18 1986). Where a principal grants an agent express or implied authority, the principal generally is  
19 responsible for the agent's actions that fall within the scope of his authority. *See Weeks* at 623;  
20 RESTATEMENT (SECOND) OF AGENCY § 228(1); *see also Rouse Woodstock Inc.*, 630 F. Supp. at  
21 1010-11 (principal who places agent in position of authority normally must accept the  
22 consequences when the agent abuses that authority). Therefore, it appears that the Bank violated  
23 2 U.S.C. §§ 441b(a) and 441f.

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- 1           Accordingly, the Commission finds reason to believe that Bank of America Corporation**
- 2   violated 2 U.S.C. §§ 441b(a) and 441f.**

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